



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3140

OFFICE OF
Air and Waste

Francea L. McNair
Executive Director
Olympic Region Clean Air Agency
2940 Limited Lane NW
Olympia, Washington 98502

Re: Approval of Olympic Region Clean Air Agency's Request for Updated Delegation of Authority for National Emissions Standards for Hazardous Air Pollutants

Dear Ms. McNair:

This letter is in response to your March 7, 2018, request to update and continue the delegation of certain National Emission Standards for Hazardous Air Pollutants (NESHAP). Consistent with the approved mechanism for streamlined delegation as described in 67 FR 3106 (January 23, 2002), the United States Environmental Protection Agency (EPA) hereby grants this updated delegation request, as described below, to the Olympic Region Clean Air Agency (ORCAA) for the identified NESHAP in effect on July 1, 2017.

Delegation Request

You have requested to update delegation of the 40 CFR parts 61 and 63 NESHAP standards that were previously delegated to ORCAA and to obtain delegation of new standards that EPA has promulgated since your last delegation, subject to the following qualifications:

1. Your request for delegation of the following subparts under 40 CFR part 63 was limited to sources required to obtain permits under title V of the Clean Air Act: subparts M, RRR, ZZZZ, BBBB, HHHHH, XXXXX.
2. Your request for delegation excluded subparts under 40 CFR part 61 regulating radon or radionuclides, specifically, 40 CFR part 61, subparts B, H, I, K, Q, R, T, and W.
3. Your request for delegation excluded the following subpart under 40 CFR part 63: LL.¹

ORCAA demonstrated that on October 16, 2017, ORCAA adopted 40 CFR parts 61 and 63 unchanged and as in effect on July 1, 2017 into ORCAA's regulations in Rules 8.15 and 8.17.

Delegation of Authority

EPA has determined that ORCAA's regulations continue to provide adequate and effective procedures for implementing and enforcing the NESHAP. Accordingly, EPA hereby approves your request for an

¹ Subpart LL applies to primary aluminum reduction plants which, in the State of Washington, are regulated by the Washington Department of Ecology

updated delegation of authority to implement and enforce the NESHAP standards identified in Enclosures A and B, subject to the following terms and conditions:

1. As requested by ORCAA:
 - a. The delegation of 40 CFR part 63, subparts M, RRR, ZZZZ, BBBB, HHHHH, XXXXX is limited to implementation and enforcement of the NESHAP as of July 1, 2017 and to sources that are required to obtain a permit under title V of the Clean Air Act, regardless of whether a permit has yet been issued.
 - b. The delegation of all other requested NESHAP is limited to implementation and enforcement of the NESHAP as of July 1, 2017.
2. EPA is not delegating the following provisions under 40 CFR part 63 to ORCAA:
 - a. Subpart B, which implements sections 112(g) and 112(j) of the Clean Air Act. EPA has previously stated that a part 70 permitting authority does not need to apply for approval in order to use its own program to implement section 112(g). Furthermore, section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements. Therefore, delegation is not required to implement sections 112(g) and 112(j) and 40 CFR subpart B. *See* 59 FR 26447 and 61 FR 68397.
 - b. Subpart C, which lists hazardous air pollutants that have been deleted or refined. This subpart grants no authority that is necessary to implement or enforce the program and is therefore not delegable.
 - c. Subpart D, which implements section 112(d) of the Clean Air Act. Because this subpart explicitly states that it applies to a State or local agency acting pursuant to a permit program approved under title V of the Clean Air Act, delegation is unnecessary.
 - d. Subpart E, which establishes procedures for the EPA approval of State rules, programs, or other requirements to implement and enforce section 112 Federal rules and is not delegable.
 - e. Those paragraphs of subpart S that apply exclusively to Kraft or sulfite pulp mills. In the State of Washington, such sources are regulated by the Department of Ecology.
 - f. Subpart LL, which applies to primary aluminum reduction plants. In the State of Washington primary aluminum reduction plants are regulated by the Department of Ecology.
3. Note that certain authorities are automatically granted to you because you have an approved part 70 program (see for example, 40 CFR 63.1(1)). See 66 FR at 48213. However, you must have authority to implement and enforce the particular standard against the source as a matter of State law in order to implement this authority as a matter of federal law.
4. EPA is delegating the identified federal standards as in effect on July 1, 2017. New NESHAP or NESHAP that are revised substantively after that date are not delegated to your agency; these remain the responsibility of EPA.

- a. Acceptance of this delegation does not commit your agency to request or accept delegation of future NESHAP standards and requirements.
 - b. EPA encourages your agency to update your NESHAP delegation on an annual basis. This could coincide with the updating of the adoption by reference of the federal NESHAP standards, which is important for maintaining EPA's approval of your part 70 permitting program.
5. EPA is not delegating authorities under 40 CFR parts 61 and 63 that specifically indicate they cannot be delegated, that require rulemaking to implement, that affect the stringency of the standard, equivalency determinations, or where national oversight is the only way to ensure national consistency.
6. EPA is not delegating standards that have been vacated as a matter of federal law.
7. This delegation is subject to the terms and conditions of EPA's previous NESHAP delegation to ORCAA, 66 FR 48211 (September 19, 2001) as updated by this letter.
8. Implementation and enforcement of the delegated NESHAP are subject to the current *Compliance Assurance Agreement for Air Quality*, signed by both ORCAA and EPA; except that ORCAA shall provide air stationary source enforcement and compliance data to EPA via the new Integrated Compliance Information System for Air (ICIS-Air) via the Exchange Network. ICIS-Air has replaced the Air Information and Retrieval System (AIRS) Facility Subsystem (AFS) referred to in the *Compliance Assurance Agreement for Air Quality*.
9. Enforcement of these delegated NESHAP in your jurisdiction will be the primary responsibility of your agency. Nevertheless, EPA may exercise its concurrent enforcement authority pursuant to sections 112(l)(7) and 113 of the Clean Air Act and 40 CFR 63.90(d)(2) with respect to sources that are subject to the NESHAP.
10. Your agency and EPA should communicate sufficiently to ensure that each is fully informed and current regarding interpretation of regulations (including any unique questions about applicability) and the compliance status of subject sources in your jurisdiction.
 - a. Any records or reports provided to or otherwise obtained by your agency should be made available to EPA upon request.
 - b. In accordance with 40 CFR 61.16 and 63.15, the availability to the public of information provided to or otherwise obtained by EPA in connection with this delegation shall be governed by 40 CFR part 2.
11. Your agency will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for these delegated NESHAP. EPA may request notifications and reports from owners/operators and/or your agency, if needed.
12. Your agency will work with owners and operators of affected facilities subject to a NESHAP subpart to ensure all required information is submitted to your agency. Your assistance is requested to ensure that this information, including excess emission reports and summaries, is submitted to EPA upon request, if needed.
13. Your agency will ensure that all relevant source notification and report information is entered into the ICIS-Air database system to meet your recordkeeping/reporting requirements. The ICIS-Air

reporting elements for “source information” that your agency is expected to provide include, but are not limited to:

- a. Identification of source;
- b. Pollutants regulated;
- c. Applicability of subparts;
- d. Permit number for specific source or sub-unit;
- e. Dates of most recent NESHAP compliance evaluations (inspections); and
- f. Compliance status.

14. Your agency will require affected facilities to use the methods specified in 40 CFR parts 61 and 63, as applicable, in performing source tests pursuant to the regulations. *See* 40 CFR 61.7 and 63.7.

15. Changes and alternatives:

- a. For part 61 standards, your agency is not delegated the authorities under 40 CFR 61.04(b), 61.05(c), 61.11, 61.12(d), 61.13(h)(1)(ii), 61.14(d), 61.14(g)(1)(ii), and 61.16. Such authorities and approvals remain the responsibility of EPA.
- b. For part 63 standards, your agency is not delegated the Category II authorities in 40 CFR 63.91(g)(2)(ii). Such authorities and approvals remain the responsibility of EPA.
- c. Your agency must maintain a record of all approved alternatives to monitoring, testing, and recordkeeping/reporting requirements and provide this list of alternatives to EPA semi-annually or more frequently if requested by EPA. EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with your agency. If changes are disapproved, your agency must notify the owner/operator that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the owner/operator does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, your agency must require the source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

16. Any authorities not addressed in this letter and not identified in any delegated subpart of part 61 or 63 as authorities that cannot be delegated shall be considered delegated. *See* 66 FR 48213, Fn. 2, September 19, 2001.

17. Your agency’s authority to implement and enforce the NESHAP under this delegation does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151.² Consistent with previous Federal program approvals or delegations, EPA will continue to implement the NESHAP in Indian Country because your agency did not adequately demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country.

18. The EPA Administrator delegated to EPA, Region 10 the authority to delegate the NESHAP to any State or local agency. A State or local agency that receives delegation from EPA Region 10 does not have the federally recognized authority to further delegate the NESHAP.

² Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

19. 40 CFR 63.96(b) contains the applicable procedures governing withdrawal of this delegation by EPA or from this delegation by ORCAA, as applicable.

Unless we receive negative comments from you within ten days, this delegation is final and will be effective ten days from the date of this letter. Otherwise, no further correspondence to EPA is needed from ORCAA to make this delegation effective. We will periodically publish a notice in the Federal Register informing the public of ORCAA's updated delegation.

If you have any questions, please contact Geoffrey Glass of my staff at (206) 553-1847 or glass.geoffrey@epa.gov.

Sincerely,

Timothy B. Hamlin
Director

Enclosures

cc: Stu Clark, Washington Department of Ecology
Elena Guilfoil, Washington Department of Ecology (email)
Mark Goodin, Professional Engineer, ORCAA (email)